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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**HUMAN RIGHTS COMMISSION (CHILDREN AND YOUNG PEOPLE
COMMISSIONER) AMENDMENT BILL 2005**

EXPLANATORY STATEMENT

Circulated by the Authority of
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HUMAN RIGHTS COMMISSION (CHILDREN AND YOUNG PEOPLE COMMISSIONER) AMENDMENT BILL 2005

BACKGROUND

In April 2003, the ACT Government commissioned the Foundation for Effective Markets and Governance (FEMAG) to conduct a Review of Statutory Oversight and Community Advocacy Agencies. The Review looked at a broad range of statutory oversight and community advocacy bodies, taking a holistic view of the system so that it could make recommendations on improvements in the system as a whole. The final report was released in December 2003.

In response to recommendations in the FEMAG report the Human Rights Commission Bill 2005 (HRC Bill) has been introduced to establish a new structure for statutory oversight in the ACT.

The Public Advocate Bill will be introduced to address a recommendation in the FEMAG report that the name of the Community Advocate be changed to 'Public Advocate'. The Public Advocate Bill 2005 (Public Advocate Bill) changes the name of the statutory position.

The Human Rights Commission (Children and Young People Commissioner) Amendment Bill 2005 (the Bill) establishes the role of the Children and Young People Commissioner within the Human Rights Commission. To support that role, the Human Rights Commission will be given functions relating to oversight of services for children and young people in the ACT.

In 2003, the Standing Committee on Community Services and Social Equity in their *Rights, Interests and Well-being of Children and Young People* report, recommended establishing a Commissioner for Children and Young People to promote and protect the interests of children and young people in the ACT.

The Territory as Parent: Review of the Safety of Children in Care in the ACT and of ACT Child Protection Management (Vardon Report) and *The Territory's Children: ensuring safety and quality of care for children and young people* (Murray Report) made 114 recommendations for reforming care and protection services in the ACT. Recommendation 8.24 of the Vardon Report recommended the establishment of a Commissioner for Children and Young People.

The establishment of the Commissioner was also a commitment in the *ACT Children's Plan* and the *ACT Young People's Plan*.

The establishment of a Commissioner aligns with the *United Nations Convention on the Rights of the Child 1990*, where Article 12 provides the right for a child or young person to express their views. Section 11 of the *Human Rights Act 2004* provides a right about the protection of the family and children generally reflecting Articles 23 and 24 of the *International Covenant on Civil and Political Rights (ICCPR)*.

The amendments provide for the Human Rights Commission to have an expansive role in relation to children and young people. The Commission will have responsibility for statutory oversight in the ACT to ensure the delivery of quality services for children and young people and their carers. The Commission will also deal with complaints and conciliation of complaints, inquiries, and community education in relation to children and young people and their carers.

The Human Rights Commission and Public Advocate functions will intersect in relation to complaints and advocacy for children and young people. The Public Advocate will promote the rights of vulnerable children and young people through individual advocacy. This individual advocacy may point to systemic concerns. The Human Rights Commission will deal with systemic concerns as part of its role in relation to children and young people.

The Bill also makes minor amendments in defining disability services.

SUMMARY

The Bill amends the HRC Bill to establish a Children and Young People Commissioner to promote and protect the interests of children and young people in the ACT.

In particular, the Bill:

- promotes the rights of children and young people through the appointment and functions of the Commissioner;
- establishes the process for complaints about services for children and young people;
- promotes improvements in the provision of services for children and young people; and
- enables the Commission to refer some requests from children or young people in the care of the Chief Executive to the Public Advocate.

The Bill also provides for minor technical amendments to the HRC Bill and amends the *Children and Young People Act 1999* and the *Legislation Act 2001* and the *Ombudsman Act 1989*.

REVENUE/COST IMPLICATIONS

The 2005-2006 Budget provides \$1.5 million over four years, through the Department of Justice and Community Safety, to establish a Children and Young People Commissioner in the ACT.

SUMMARY OF CLAUSES

The summary of clauses consists of five parts, these are:

1. formal causes,
2. clauses containing content about the Children and Young People Commissioner;
and
3. minor technical amendments including the dictionary and Schedule 1.

1. Formal Clauses

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence on a day set by the Minister. However, the Act will commence automatically after six months if the Minister sets no earlier day.

Clause 3 provides for the act to amend the *Human Rights Commission Act 2005*, the *Legislation Act 2001*, and the *Ombudsman Act 1989*.

2. Clauses Relating to the Children and Young People Commissioner

Main objects of the Act

Clause 4 provides that the main objects of the HRC Act are amended to incorporate the promotion of improvements for services for children and young people and the promotion of the rights of users of services for children and young people.

Clause 5 ensures that the Human Rights Commission establishes processes for the resolution of complaints and contribution to the review of services for children and young people.

Definition of ‘Service for Children and Young People’

Clause 7 adds a new provision defining ‘service for children and young people’ as a service provided specifically for children and young people, or their carers. The meaning is restricted to those services provided in the ACT. The meaning of child and young person for the purpose of this definition is set out in the Dictionary to the Act and the *Children and Young People Act 1999* sections 7 and 8.

The Human Rights Commission

Clause 8 adds the children and young person commissioner to the list of members of the Commission.

Clause 10 ensures that the Commission exercises functions inclusive of services for children and young people including improving service quality and developing and improving procedures for dealing with complaints.

Clause 11 provides that an additional function of the Commission is to request that the Public Advocate deal with issues about individual children or young people for whom the Chief Executive has parental responsibility.

The Children and Young People Commissioner

The position of the Children and Young People Commissioner is established in clause 14. The Executive appoints a person to be the Children and Young People Commissioner for a period of up to five years. Conditions of appointment are agreed between the appointed Children and Young People Commissioner and the Executive but are subject to any determinations made by the Remuneration Tribunal. The Executive must choose a person who has appropriate experience and expertise for the position. The Children and Young People Commissioner will bring to the commission specialist knowledge and experience of services for children and young people and will represent the Commission in dealing with issues in relation to these services.

Functions

The functions of the Commission are outlined in clause 14 of the Human Rights Commission Bill 2005. The members of the Commission will work in a collegiate manner and decide on how the Commission will carry out its functions. Specialist Commissioners will be responsible for dealing with complaints, inquiries, and preparation of advice and community education in relation to particular areas of expertise. The Children and Young People Commissioner will work with the Commission to exercise the functions of the Commission that relate to services for children and young people. However, the Commission can arrange to handle matters differently on occasion if it considers that to do so is appropriate.

The Children and Young People Commissioner must try to:

- consult with children and young people and promote their participation in decision making;
- listen to children and young people and seriously consider their views;
- ensure that the Commission is accessible to children and young people; and
- be sensitive to the linguistically and culturally diverse backgrounds of children and young people.

Advisory Committees

The Children and Young People Commissioner is empowered to set up advisory committees to help the Commission make informed decisions in relation to services for children and young people. Children and young people and people with experience or expertise in relation to services for children and young people can be appointed to an advisory committee.

Ending of Appointment

Clause 20 sets out that the Children and Young People Commissioner is subject to the same provisions about the ending of appointments as the other Commissioners in the Human Rights Commission.

Complaints Handling

The Human Rights Commission will have additional responsibilities for handling complaints about a service for children and young people and their carers.

When

Clause 24 advises when a person can complain about a service for children and young people. A complaint can be made when a service is not being provided or when the service is not being provided appropriately. A complaint about a service for children and young people can also be made if a person thinks that the provider of the service has acted inconsistently with:

- the generally accepted standard of service delivery expected of providers of that kind of service; or
- other standards prescribed by regulation.

What

Clause 25 adds a new provision to ensure that children and young people service complaints can be made under division 4.1 of the Act. The clause also renumbers section 42 of the Act to include a children and young people service complaint.

Who

Clause 26 provides that if a complaint is in relation to a child or young person then the parent or guardian of the child or young person can make a complaint to the Commission under the Act.

Essentially a child or young person's parent or guardian may make a complaint if they believe the child or young person is aggrieved by the way in which a provider or other person has acted and as a result the parent or guardian thinks that grounds for making a complaint exist.

Clause 27 adds a new subsection 43 (2) (b), which ensures that if a person has a 'legal disability' they are not excluded from making a complaint. By law, a child or young person is considered to have a legal disability due to age, this clause ensures a child or young person can make a complaint to the Children and Young People Commissioner. Clause 27 also renumbers section 43 (2) to reflect the new subsection.

Consideration without complaint

Clause 28 allows the Commission to consider a matter that is a children and young people service complaint if it considers relevant and important without the need to have a person make a complaint about that matter or have a ministerial direction to inquire into the matter. When the Commission decides to do that it is called a 'Commission-initiated consideration'.

Referral of advocacy matters

Clause 29 allows the Commission to refer issues arising from a children and young people complaint to the Public Advocate for if the complaint relates to a child or young

person for whom the Chief Executive under the *Children and Young People Act 1999* has parental responsibility.

The Commission can refer the complaint or matter to the Public Advocate if:

- it is in the best interests of the child or young person that the complaint or matter be referred for individual advocacy; and
- the complaint or matter is appropriate for individual advocacy by the Public Advocate.

The referral of a complaint to the Public Advocate does not stop the Commission from continuing to resolve issues and matters arising from a complaint from a child or young person.

Information about complaints

Clause 30 adds ‘a service for children and young people’ to the existing list services that are required to provide information to service consumers about how they can make complaints and provide feedback.

3. Minor Technical Amendments

Clause 6 rephrases ‘service/s for people with disability’ to ‘disability service/s’ to update the drafting style

Clause 9 renumbers section 12 (1) (b)

Clause 12 renumbers section 14 (1) (g) to (i)

Clause 13 renumbers the reference in section 14 (2) to align with clause 12

Clause 15 rephrases ‘service/s for people with disability’ to ‘disability service/s’ to update the drafting style

Clause 16 renumbers division 3.3 as division 3.4 to reflect the addition of the Children and Young People Commissioner in division 3.3

Clause 17 rephrases ‘older people services’ to ‘services for older people’ in section 41 to update the drafting style

Clause 18 renumbers divisions 3.4 to 3.6 to reflect the addition of the Children and Young People Commissioner in division 3.3

Clause 19 changes the heading in section 28 to reflect the renumbering due to the addition of the Children and Young People Commissioner in division 3.3

Clause 21 renumbers section 28 to incorporate the addition of the Children and Young People Commissioner

Clause 22 renumbers divisions 3.7 to 3.9 to reflect the addition of the Children and Young People Commissioner in division 3.3

Clause 23 rephrases ‘service for people with disability’ to ‘disability service’ to update the drafting style.

Clause 24 rephrases ‘older people services’ to ‘services for older people’ to update the drafting style

Clause 31 changes the phrase ‘divulge/d or communicate/d’ to ‘divulge/d’ to reflect the definition of ‘divulge’ in the secrecy provision, section 99 (1). Clause 31 also provides that a person does not commit an offence if information is divulged under any law of the Territory.

Dictionary

Clause 32 removes ‘child’ from the list of terms defined by the *Legislation Act 2001*.

Clause 33 adds the term ‘Public Advocate’ to the list of terms defined by the *Legislation Act 2001* following the introduction of the *Public Advocate Act 2005*.

Clause 34 changes the definition of ‘applicable standard’ to include standards that may apply to services for children and young people. The phrase ‘older people service’ has been rephrased to ‘service for older people’ to update its drafting style.

Clause 35 provides new definitions of:

- *Child* meaning a person under 12 years which is consistent with the *Children and Young People Act 1999*;
- *Children and Young People Commissioner*;
- *children and young people service complaint*; and
- *Discrimination Commissioner*, reflecting the position under section 22 of the HRC Act.

The phrase ‘service for people with disability’ has been removed in Clause 39 and has been rephrased to ‘disability service’ in Clause 35 to update its drafting style.

Clause 36 renumbers the position of the definition of ‘discrimination complaint’ in the HRC Act

Clause 37 changes the words in the definition of incorporated document to ‘disability service’

Clause 38 is a new definition of service for children and young people in section 8A

Clause 40 provides a new definition of young person as ‘a person who is 12 years or older, but not yet an adult’, this definition is consistent with the *Children and Young People Act 1999*.

Schedule 1

Clause 1.1 adds the new definition of Children and Young People Commissioner to the *Legislation Act 2001*

Clause 1.2 changes section 5(2)(n) of the *Ombudsman Act 1989* so that the Ombudsman cannot investigate the provision or refusal to provide services for children and young people or services for older people. The Commissioners in the Human Rights Commission and the Public Advocate will perform investigation of these activities.

Clause 1.3 provides the new definition of ‘service for children and young people’ in this Act to be incorporated into the *Ombudsman Act 1989*.